



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5933-N-01]

Notice of Neighborhood Stabilization Program; Changes to Closeout Requirements related to Program Income

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice describes changes to closeout requirements applied to and additional regulations waived for grantees receiving grants under the three rounds of funding under the Neighborhood Stabilization Program who are also grantees under the Community Development Block Grant (CDBG) program.

DATES: Effective Date: [Insert date of publication in Federal Register].

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7286, Washington, DC 20410; telephone number 202-708-3587 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Neighborhood Stabilization Program (NSP) was established by Division B, Title III of the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110-289, approved July 30, 2008), for the purpose of stabilizing communities that have suffered from foreclosures and abandonment. As established by HERA, NSP provided grants to all states and selected local governments on a formula basis. The American Recovery and Reinvestment Act of 2009

(Recovery Act) (Pub. L. 111–5, approved February 17, 2009) authorized additional NSP grants to be awarded to states, local governments, nonprofits and a consortium of nonprofit entities, but on a competitive basis. The Recovery Act also authorized funding for national and local technical assistance providers to support NSP grantees. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd- Frank Act) (Pub. L. 111–203, approved July 21, 2010) authorized a third round of Neighborhood Stabilization grants to all states and select local governments on a formula basis.

The purpose of the funds awarded under the three rounds of NSP is to target the stabilization of neighborhoods negatively affected by properties that have been foreclosed upon and abandoned. The notice, Notice of Formula Allocations and Program Requirements for Neighborhood Stabilization Program Formula Grants, published October 19, 2010 (75 FR 64322) (“Unified NSP Notice”), provides further background for these programs, the program principles, and the objectives and outcomes of the NSP program. The Notice of Neighborhood Stabilization Program; Closeout Requirements and Recapture (Closeout Notice), published November 27, 2012 (77 FR 70799), amended the Unified Notice by adding grant closeout and related provisions. In addition, the Notice of Fund Availability (NOFA) for the Neighborhood Stabilization Program 2 under the American Recovery and Reinvestment Act, 2009, 74 FR 21377 (May 7, 2009), as amended by subsequent notices (“NSP2 NOFA”), includes requirements specific to the competitive round of funding under the Recovery Act.

II. This Notice

The primary purpose of this notice is to revise requirements set forth in the amended Unified NSP Notice and the Closeout Notice to revise the treatment of program income for all three rounds of NSP by allowing NSP program income received by a CDBG recipient to be

transferred by the recipient from the NSP program to the CDBG program. After the transfer is carried out, any transferred program income will be subject to the CDBG program income regulations. Following publication of this notice, HUD will update the issued NSP closeout instructions (Notice CPD 14-02) to conform the instructions for consideration of program income during and after closeout of NSP grants.

The Closeout Notice generally required that with the exception of de minimis amounts received after grant closeout, program income generated by NSP-assisted activities must continue to be used for NSP uses. In attempting to implement this requirement, HUD has become aware that it is, in many instances, administratively unworkable for NSP grantees and difficult for HUD to oversee effectively. For NSP grantees that are generating a substantial amount of program income, the requirement to use this program income prior to drawing additional funds from the grant's line of credit is also impeding their ability to completely expend their NSP grant funds. Further, some grantees no longer have an adequate pool of NSP-eligible foreclosed or abandoned properties in their target areas although they do have other needs that CDBG funding could be used to address. On HUD's part, with dwindling administrative resources remaining from those provided for the NSP program, the inability to achieve the criteria for grant closeout for these grantees creates a looming oversight issue.

Several NSP grantees have asked that HUD reconsider the NSP program income requirements and allow the same flexibility for the NSP program income as is currently allowed for the CDBG Disaster Recovery (CDBG-DR) grants under Public Law 113-2. These requirements allow a grantee to transfer CDBG-DR program income received prior to grant closeout to the recipient's CDBG program. HUD agrees that this solution addresses the issues identified above and so this notice will provide the same flexibility to any NSP grantee that is

also a CDBG grantee (entitlement or state) with an open formula entitlement grant or a unit of general local government (UGLG) recipient of a CDBG grant from a state. HUD will not allow transfer of NSP program income to the CDBG program if the transfer will result in the NSP grantee failing to meet the statutory NSP 25 percent set-aside requirement for low-income housing. To prevent such a failure, the grantee must obtain HUD approval by notifying HUD in writing prior to a transfer of program income from NSP to CDBG to permit HUD's review of compliance with the NSP 25 percent requirement. HUD will notify the grantee of any possible issues. Based on the data available, HUD anticipates that issues of this sort will be uncommon.

Since this notice applies to grantees receiving grants under any of the three rounds of NSP funding, the terms NSP1, NSP2 or NSP3 are used to describe each of the three funding rounds. When referring to the grants, grantees, assisted activities, and implementation rules under HERA, this notice will use the term "NSP1." When referring to the grants, grantees, assisted activities, and implementation rules under the Recovery Act, this notice will use the term "NSP2." When referring to the grants, grantees, assisted activities, and implementation rules under the Dodd-Frank Act, this notice will use the term "NSP3." Collectively, the grants, grantees, assisted activities, and implementation rules under these three rounds of funding are referred to as NSP. NSP is a component of the CDBG program, authorized under the Housing and Community Development Act of 1974 (HCD Act) (42 U.S.C. 5301 *et seq.*).

III. Authority to Provide Alternative Requirements and Grant Regulatory Waivers

HERA appropriated \$3.92 billion for emergency assistance for redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the funds are to be treated as CDBG funds. HERA, the Recovery Act, and the Dodd-Frank Act authorize the Secretary of HUD to specify

alternative requirements to any provision under Title I of the HCD Act except for requirements related to fair housing, nondiscrimination, labor standards, and the environment. Any alternative requirements must be in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting for NSP1 or facilitating the NSP2 or NSP3 use of grant funds. The CDBG requirements will apply to NSP funds except where this or other published notices supersede or amend such requirements.

This Notice amends an existing alternative requirement by allowing an NSP grantee that is also a CDBG formula grantee or a State CDBG UGLG grant recipient to transfer NSP program income to the CDBG program rather than limiting the use of such program income to NSP purposes before, at, and after grant closeout. Except as described in this notice and previous notices governing NSP, statutory and regulatory provisions governing the CDBG program, including those at 24 CFR part 570, subpart I, for states or, for CDBG entitlement communities, including those at 24 CFR part 570, subparts A, C, D, J, K, and O, as appropriate, apply to the use of these funds. The State of Hawaii was allocated funds and will be subject to part 570, subpart I, as modified by this notice.

IV. Alternative Requirements and Regulatory Waivers

1. Section N of the Unified NSP Notice and section N of Appendix I of the NSP2 NOFA is amended to add a new subparagraph 4, as follows:

“4. An NSP grantee may transfer NSP program income at any time before, at the time of, or after closeout to its annual CDBG program, or, if it is an UGLG that is also a State CDBG grant recipient, to its State CDBG program. In addition, a State grantee may transfer NSP program income before or at closeout to any annual CDBG-funded activities carried out by a UGLG or Indian tribe within the State. Program income generated by an NSP-assisted activity

and received by a CDBG grantee, or received and retained by a CDBG subgrantee, after closeout of the grant that generated the program income, may also be transferred to a grantee's annual CDBG award. Transferred NSP program income will become CDBG program income upon receipt in the Integrated Disbursement and Information System (IDIS). Prior to carrying out a transfer, the grantee must notify HUD in writing of the amount of program income on hand to be transferred, the grant number and activity number associated with the NSP activity that generated the program income, and the name of the CDBG program grantee (or subgrantee, if appropriate) to which the funds will transfer. On receipt of a notification, HUD will review NSP grant information reported in the Disaster Recovery Grant Reporting System (DRGR) for the applicable grant to ensure the grantee is in compliance with the requirement at paragraph E.2.e of the Unified Notice, 75 FR 64331, for NSP1 and NSP3 grantees, and Appendix I of the NSP2 NOFA for NSP2 grantees, and only approve the transfer if use of NSP funds remaining after the transfer will comply with this requirement. After HUD approval, if NSP program income funds have already been receipted in DRGR, the grantee must first revise the DRGR submission to subtract the amounts receipted there prior to receipting any transferred amounts in IDIS. Subsequent to transfer, all transferred program income must be treated (documented, receipted in IDIS, used, and reported on) in accordance with CDBG program requirements. Any NSP program income that is not receipted in IDIS will retain its NSP characteristics and requirements in accordance with published notices governing NSP."

2. Section Y(c)(3)(i) of the Unified NSP Notice is amended to read as follows:

"Any NSP program income on deposit in financial institutions at the time the closeout agreement is signed and any NSP program income currently held by subrecipients or consortium members, together with the amounts of any NSP program income that have been transferred to

the CDBG program of the grantee or a specified UGLG recipient prior to execution of the closeout agreement.”

3. Under the “Background” subheading in section Z of the Unified NSP Notice, the Program Income paragraphs are amended to read as follows:

“Program Income. NSP program income received before, at the time of, or after closeout may be transferred to an annual CDBG program as provided in section N and transferred funds will become CDBG program income upon receipt in IDIS (such receipt in IDIS will be subsequent to edits to remove receipt of the funds in DRGR, if such receipt was already entered). Upon transfer, CDBG program income will be subject to all CDBG statutory and regulatory requirements for program income.

“Any NSP program income not transferred to CDBG shall, subject to the de minimis exception provided for in section Y, continue to be used in accordance with NSP requirements. The un-transferred funds will retain NSP characteristics and be subject to NSP requirements so the additional flexibility created by the legislation for the creation of financing mechanisms, development of new housing, operation of land banks, and service of families up to 120 percent of Area Median Income (AMI), will remain in place. However, HUD notes that continued acquisition of new land bank property after closeout with NSP program income could undermine the urgency of finding uses for the properties already acquired. Grantees will be required to allocate 25 percent of NSP program income to housing for families with less than 50 percent of AMI when the amount of annual program income received by a grantee is sufficient to make application of this requirement reasonable. After grant closeout, former NSP grantees that are CDBG entitlements or State governments will report at least annually as provided for by HUD, initially in DRGR and later in an enhanced IDIS, on the receipt and use of NSP program income,

and the disposition of land-banked properties. These grantees must also include NSP program income in the annual CDBG Action Plan or substantial amendment in accordance with CDBG requirements. All former NSP grantees, including nonprofits and nonentitlement units of general local government receiving funds directly from HUD, must report at least annually in a form acceptable to the Secretary regarding enforcement of any NSP continuing affordability restrictions. Reporting will continue over the course of the minimum period of affordability set forth in HOME program standards at 24 CFR 92.252 (e) and 92.254(a)(4).

“Finally, most program income will be received by CDBG entitlement cities and counties, and by states, which have systems and procedures to manage NSP revenues, which are treated in most respects like CDBG revenues. However, non-profit consortium members in NSP2 grant consortia that receive revenues generated by NSP projects will not have access to the state and municipal CDBG tracking systems. Further, the CDBG regulation and Office of Management and Budget (OMB) circular implemented at 24 CFR 84.24(e) or 2 CFR 200.307(f), as applicable, do not require that non-profit grantees continue to treat revenues generated from use of NSP funds and received after grant closeout as federal funds unless HUD regulations or the terms and conditions of the award provide otherwise. Thus, for NSP2 grantees that are not direct formula CDBG grantees (non-profits and non-entitlement local governments, including those that are part of a consortium), HUD is requiring that revenues generated by projects funded before closeout but received within 5 years after grant closeout must be used for NSP-eligible activities and meet NSP benefit requirements, but no other federal requirements would apply. With the exception of income earned from the sale of NSP-assisted real property or loans, any income earned by such post-closeout use of funds would not be governed by any NSP

requirements and would be miscellaneous revenues, although HUD encourages such grantees to apply NSP principles to subsequent uses of the funds.”

4. The paragraphs in section Z under the “Requirements” subheading are amended to read as follows:

“Requirements

“1. Program Income. Gross revenues received by NSP grantees after closeout will be governed by the following requirements:

“a.i. After notifying HUD in writing and receiving prior written approval, the grantee may receipt the amounts to IDIS (after first revising any DRGR entries related to the funds) and add them to the grantee’s CDBG program income receipts and all relevant CDBG program income requirements shall then apply. HUD will approve a transfer unless the transfer would result in non-compliance with the requirement at 75 FR 64331, paragraph E.2.e based on the use of the NSP funds that would remain after transfer.

“a.ii. If the amounts are not receipted in IDIS, annual amounts of program income in excess of \$25,000 shall be used in accordance with all NSP requirements for eligible NSP properties, uses, and activities, including new construction, financing mechanisms, and management and disposition of land bank property.

“b. If annual NSP program income does not exceed \$25,000, the funds shall be used for general administrative costs related to ensuring continued affordability of NSP units or added to the grantee’s CDBG program income receipts and the CDBG requirements at 24 CFR 570.500(a)(4) shall apply, which may exclude such amounts from the definition of program income.

“c. NSP program income may provide benefit to individuals and families with incomes up to 120 percent of AMI as permitted in NSP under section II.E;

“d. If a grantee’s annual NSP program income exceeds \$250,000 (after any transfer of program income to CDBG), 25 percent of the program income shall be used to house individuals or families below 50 percent of AMI; in instances in which a grantee’s annual NSP program income does not exceed \$250,000, the requirements of paragraph II.E.2.e do not apply.

“e. NSP2 grantees that are not CDBG entitlement communities or States must use post-closeout revenues generated from NSP-assisted activities funded before closeout for NSP purposes. If the grantee does not have another ongoing grant received directly from HUD at the time of closeout, then in accordance with 24 CFR 570.504(b)(5), income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by NSP or CDBG rules, except that such income shall be used for activities that meet one of the national objectives in 24 CFR 570.208 and the eligibility requirements described in section 105 of the HCD Act. The provisions of 24 CFR 570.504(b)(5) are waived to limit its application to income received within 5 years of grant closeout. Any income received 5 years after grant closeout, as well as program income from funds outlaid after the date of the closeout agreement may be used without restriction. Such grantees are encouraged to use such funds in accordance with the principles above.

“f. States may continue to act directly to implement NSP activities post-closeout.

“g. HUD will provide direction to grantees by the date of closeout on procedures for reporting and tracking NSP program income revenues. Tracking will continue in DRGR until IDIS enhancements to allow NSP property registry and program income tracking are developed and released.”

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for grants made under NSP are as follows: 14.218; 14.225; and 14.228.

Paperwork Reduction Act

HUD has approval from OMB for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). OMB approval is under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1-800-877-8339.

Dated: May 16, 2016.

Harriet Tregoning,
Principal Deputy Assistant Secretary for
Community Planning and Development.

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